

**REMARKS/ARGUMENTS**

The Examiner objects to the form of the Abstract. A new Abstract in conformance with the Examiners' guidelines is hereby substituted for the originally-filed Abstract.

Claims 1 – 67 are pending in the application. Applicants respectfully traverse each of the Examiner's rejections. New Claims 68, 69 and 70 are added by way of this amendment. A "clean copy" of the claims is attached to this Response.

Claims 54 – 60 and 63 – 67 are rejected under 35 U.S.C. § 112, 2d paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended the relevant claims so as to properly address the Examiner's rejections. Accordingly, withdrawal of the § 112 rejections is respectfully requested.

**A. 35 U.S.C. § 102 Rejections**

Claims 1 – 11, 14 – 18, 38, 46 – 47, 51 – 59, 61 and 63 – 66 are rejected under 35 U.S.C. § 102(e) as being anticipated by *Turner* et al. Applicants respectfully traverse the Examiner's rejection of these claims.

**1) Claim 1:**

Claim 1 is rejected as being anticipated by *Turner*. Claim 1 recites, among other elements, an end strip having a first section, a second section, and a third section. Limitations in claim 1 further provide the relative positioning of these first, second, and third sections, as well as structural limitations concerning the elasticity of or relative elasticity of the first and second sections.

For anticipation under § 102, the reference must teach every aspect of the invention either explicitly or implicitly. MPEP 706.02. Applicants respectfully assert that *Turner* does not teach or suggest each and every aspect of the invention as presently claims, and, as such, the present invention is structurally different from the *Turner* invention.

First, *Turner* does not disclose the combination of three distinct (in regard to elasticity or relative position) sections as recited in claim 1. *Turner* does not refer to or distinguish sections of the flap anywhere in the specification. As discussed in Applicants' specification, these characteristics of the end strip provide certain advantages and attributes not found in the cited references or in any of the prior art. The cited references does not even suggest what the

Applicants' regards as its contribution to the art and thus its invention. To construe the cited references as suggesting all the features of the working disposable absorbent that is Applicants' invention is impermissible hindsight.

Secondly, *Turner* does not teach or suggest such a combination of three sections wherein a first elastic section has generally elastic properties, and wherein a second elastic section is substantially more elastic than the second section. *Turner* merely notes that the flap may include a layer of elastomeric material; it does not disclose the location of this layer on the flap. *Turner* also does not teach nor suggest how to integrate this elastic layer (or any elastic section for that matter) into the flap such that three distinct sections are defined thereon, as required by claim 1. *Turner* also does not suggest the relative elasticity between any two sections of the flap, with or without the elastic layer, as required by claim 1.

Applicants respectfully note that item 54 in FIGS. 1 and 5 are elastic strands and not apertures (See Col. 9, lns. 54-59). The elastic strands are attached to the flap, but are not part of the flap. Thus, the elastic property of the strand is not a property of a "flap section" (if there is such a section) or more specifically, not a property of the material that forms the flap section.

Further, *Turner* does teach or suggest the position of the second section with respect to the first section, and does not teach or suggest the position of the third section with respect to the second, as required by claim 1.

Claim 1 is, therefore, patentable over the cited references for any one of the above reasons.

**2) Claim 2:**

Claim 2 is rejected as being anticipated by *Turner*. Claim 1 depends from claim 1 and is patentable for reasons set forth above with respect to claim 1. In addition, claim 1 further recites the second section formed from an elastic material and having a void therein adapted to substantially de-elasticize an area of the second section. Clearly, *Turner* does not disclose such a second section nor any voids in any section, as recited in claim 1. The only voids referenced in *Turner* relate to void spaces *between fibers* in the absorbent material 30. (Col. 10, lns. 20-24). Neither item 20 nor item 54 are voids or apertures, or function to de-elasticize a section of the flap.

Accordingly, claim 2 contains additional patentable subject matter.

**3) Claim 3:**

Claim 3 is rejected as being anticipated by *Turner*. Examiner notes that *Turner*

discloses first and second sections secured to a topsheet. Applicants respectfully assert the same arguments made for claim 1 and would further argue that *Turner* does not teach or suggest securing a first and second section to a topsheet. *Turner* merely discloses that the flap is adhesively joined to the topsheet. *Turner* does not disclose the advantages achieved when specific sections of an end strip are secured to a topsheet.

Accordingly, claim 3 contains additional patentable subject matter.

**4) Claims 4-8, and 10**

Claims 4-8, and 10 are rejected as being anticipated by *Turner*. The Examiner notes that *Turner* shows an end strip formed from elastic material. *Turner* does not teach or suggest the combination of the structure in claim 1 and an elastic end strip. Applicants respectfully assert the same arguments made for claim 1.

Accordingly, claims 4-8, and 10 contain additional patentable subject matter.

**5) Claim 9**

Claim 9 is rejected as being anticipated by *Turner*, primarily in view of Figure 6. Applicants respectfully assert the same arguments made for claim 1 and would further note that *Turner* does not address Figure 6 or the structure disclosed therein. Figure 6, standing alone, does not show the relationship between side walls and a third section. Nor does Figure 6 teach or suggest securing the disclosed structures such that an intermediate portion of each side wall structure is biased generally upward.

Accordingly, claim 9 contains additional patentable subject matter.

**6) Claims 11-16**

Claims 11-16 are rejected as being anticipated by *Turner*. Applicants respectfully assert the same arguments made for claim 1 and 9.

**7) Claims 17 and 18**

Claims 17 and 18 are rejected as being anticipated by *Turner*. Applicants respectfully assert the same arguments made for claim 1.

**8) Claims 19-37**

Independent claim 19 recites a disposable absorbent article having, among other elements, a pair of side walls and a pair of end strips. Each of the end strips includes an elastic inward section that is secured to an end portion of the side walls, such that the side walls are biased upwardly.

As discussed above, the *Turner* reference merely suggests including an elastic

layer in the flap. It does not teach or suggest the flap being an end strip having incorporated therein, an elastic inward section spaced from the topsheet as recited in claim 19. Further, it does not teach or suggest the inward section being specifically attached to a pair of side walls such that the side walls are biased generally upwardly. As discussed in Applicants' specification, this provides an advantageous structural feature that is part of the Applicants' unique contribution to the art.

Accordingly, for either of these reasons, independent claim 19 and claims 20-37, each of which depends from claim 19, are patentable over the cited references.

**9) Claim 38-60**

Independent claim 38 recites a disposable absorbent article having, among other elements, a containment pocket bounded by substantially continuous containment wall with two elastic wall sections and two intermediate wall sections. Further, the elastic wall portions are recited as being secured to the intermediate wall section such that the intermediate wall sections are biased generally upwardly.

Claim 38 is rejected as being anticipated by *Turner*. Applicants respectfully assert the same arguments made for claim 1 and 9 and further argues that *Turner* does not teach or suggest a substantially continuous containment wall. *Turner* does not disclose any kind of containment feature at the front waist edge of the diaper (40). Furthermore, *Turner* does not teach that each intermediate wall section is disposed between one elastic wall section and another elastic wall section, as does Claim 38.

Accordingly, independent claim 38 and claims 39-60, each of which depends from claim 38, are patentable over the cited references.

**9) Claims 61-67**

Independent claim 61 recites a disposable absorbent article having, among other elements, a containment pocket, a pair of side walls, and an end strip having elastic end section, a substantially non-elastic intermediate section, and an elastic inward section. Claim 61 and claims 62-97, each of which depends from claim 61, are therefore patentable for one or more of the reasons set forth above with respect to claims 1, 19, and 38.

**B. 35 U.S.C. § 103 Rejections**

Claims 12 – 13, 19 – 37, 39 – 45, 48 – 50, 60, 62, and 67 are rejected under 35 U.S.C. §103(a) as being patentable over *Turner*. Applicants respectfully traverse each of the Examiner's rejections.

Claims 12 – 13, 19 – 37, 39 – 45, 48 – 50, 60, 62, and 67 are rejected under 35 U.S.C. §103(a) as being patentable over *Turner*. To establish a prima facie case of obviousness under § 103 the Examiner must show 1) there is some suggestion or motivation to modify the cited reference, 2) a reasonable expectation of success, and 3) the prior art reference must teach or suggest all the claim limitations. MPEP 706.02. Applicants respectfully assert that the claims at issue are not obvious in light of *Turner* for the reasons discussed with respect to claims 1, 2, 3, and 9.

### C. New Claims

Each of claims 68 – 72 depends from claim 1 and is, therefore, patentable for reasons set forth above with respect to claim 1. Additionally, each claim defines structural limitations directed to the first, second, and third sections, which are not found in any of the cited references. Accordingly, each of claims 68-71 contains additional patentable subject matter.


In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. Please charge any fees that are due for any Petition or any fee required of this filing to the deposit account of Fulbright & Jaworski L.L.P., Account No. 06-2375 under Order No. P01896US0 (10025303).

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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